CAPITAL INSURANCE BERHAD

v.

KASIM BIN MOHD. ALI

COURT OF APPEAL, KUALA LUMPUR
DATO' N.H. CHAN JCA
DATO' SITI NORMA YAAKOB JCA
DATO' K.C. VOHRAH J
[CIVIL NO: 23-91-1994]
12 SEPTEMBER 1995

CIVIL PROCEDURE: *Appeal to Court of Appeal - Record of appeal - Contents - Memorandum of appeal contained judgment appealed against but devoid of order thereof - Whether sufficient compliance with r. 18(4)(d) Rules of the Court of Appeal 1994.*

CIVIL PROCEDURE: *Summary judgment - Recovery action against insurer - Section 96(1) Road Traffic Act 1987 - Issuance and delivery of certificate of insurance - Denial by insurance company of having issued and delivered any certificate of insurance - Whether a triable issue.*

INSURANCE LAW: *Recovery action against insurer - Section 96(1) Road Traffic Act 1987 - Liability of insurer - Whether conditional upon the insurer having delivered a certificate of insurance - Road Traffic Act 1987 ss. 91(4), 96(1).*

EVIDENCE: *Recovery action against insurer - Section 96(1) Road Traffic Act 1987 - Liability of insurer - Whether certificate of insurance delivered by insurer - Evidence of Registrar and Inspector of Motor Vehicles that certificate had been issued - Whether constituted evidence of delivery of certificate by insurer.*

The respondent has obtained judgment against the driver and owner of a motor vehicle which had knocked into him. The respondent was unable to enforce the judgment against the latter and in consequence filed a recovery action against the appellant, the purported insurer of the motor vehicle, under s. 96(1) of the Road Traffic Act (the Act). Subsequently, summary judgment was granted to the respondent and against that order the appellant has appealed.

The facts showed that in filing the appeal, the appellant had not extracted the order appealed against, so that the memorandum of appeal, while having with it the judgment appealed against, was devoid of the order. This being the case, in this appeal, the respondent sought to strike out the notice and records of appeal arguing that the same were bad in law, on account of the non-filing of the order appealed against.

It was not in dispute that the appellant's liability to satisfy the judgment was conditional upon it having delivered a certificate of insurance under s. 91(4) of the Act to the owner of the motor vehicle. In the Court below, to prove issuance and delivery of such certificate, the respondent put into evidence a letter from the Registrar and Inspector of Motor Vehicle, Selangor (RIMV), which stated that a policy of insurance had been issued by the appellant to the owner of the motor vehicle. The appellant nevertheless denied this, and a further question thus arose as to whether the RIMV's letter herein constituted sufficient proof to show delivery of a certificate of insurance by the appellant as required by s. 96(1).

Held:

Per Siti Norma Yaakob JCA (delivering the judgment of the Court):

[1] Rule 18(4)(d) of the Court of Appeal Rules 1994 requires an appellant to include in his memorandum of appeal a copy of the judgment, decree or order appealed from. A perusal of the records of appeal shows that a copy of the judgment has been included in the memorandum of appeal and since that judgment, in as much as the order, has been appealed against, there is no merits to the respondents' preliminary objection.

[2] Section 96(1) speaks of the delivery of a certificate of insurance by an insurance company to the insured and not by anybody else. The certificate must therefore be delivered by the appellant to the insured and not by anybody else. In the circumstances, the letter from the RIMV does not fulfill the requirements of s. 96(1).

[3] By the RIMV's letter the policy may well have been issued by the appellant but it is not evidence of any delivery of a certificate of insurance by the appellant to the insured as required by s. 96(1). To regard that it did as did the trial Judge is totally erroneous. The letter is not the certificate that is envisaged by s. 96(1).

[4] Since there has been no proof of delivery of the certificate of insurance as required by s. 96(1), this in itself provides a triable issue for which the appellant is entitled to a full trial. Added to this is the fact that the appellant has pleaded the letter from the RIMV to be forged. This makes it all the more undesirable and inappropriate for the suit to be dealt with summarily.

[Appeal allowed. Appellant given unconditional leave to defend.]

***[Bahasa Malaysia** Translation of Headnotes]*

***PROSEDUR SIVIL:** Rayuan kepada Mahkamah Rayuan - Rekod Rayuan - Kandungan - Memorandum rayuan mengandungi penghakiman yang dirayui tetapi tidak perintah baginya - Samada pematuhan yang mencukupi terhadap k. 18(4)(d) Kaedah-kaedah Mahkamah Rayuan 1994.*

***PROSEDUR SIVIL:** Penghakiman terus - Tindakan semula terhadap penanggung insurans - Seksyen 96(1) Akta Pengangkutan Jalan Raya 1987 - Pengeluaran dan penghantaran sijil insuran - Penafian oleh syarikat insuran mengenai telah mengeluarkan dan menghantarserah sijil insuran - Samada merupakan isu yang boleh dibicarakan.*

***UNDANG-UNDANG INSURAN:** Tindakan mendapatkan semula terhadap penanggung insuran - Seksyen 96(1) Akta Pengangkutan Jalan Raya 1987 - Tanggungan penanggung insuran - Samada bersyarat diatas penanggung insuran menghantarserahkan sijil insuran - Akta Pengangkutan Jalan Raya 1987 ss. 91(4), 96(1).*

***KETERANGAN:** Tindakan mendapatkan semula terhadap penanggung insuran - Seksyen 96(1) Akta Pengangkutan Jalan Raya 1987 - Tanggungan penanggung insuran - Samada sijil insuran telah dihantarserah oleh penanggung insuran - Keterangan Pendaftar dan Inspektor Kenderaan-Kenderaan Bermotor bahawa sijil telah dikeluarkan - Samada membentuk keterangan penghantar-serahan sijil oleh penanggung insuran.*

Responden telah mendapatkan penghakiman terhadap pemandu dan pemilik sebuah kenderaan bermotor yang telah melanggarinya. Responden telah tidak dapat menguatkuasakan penghakiman tersebut terhadap pihak yang terkemudian itu dan akibat daripada itu telah memfailkan satu tindakan untuk mendapatkan semula terhadap perayu, penanggung insuran yang dikatakan bagi kenderaan bermotor tersebut, di bawah s. 96(1) Akta Pengangkutan Jalan Raya (Akta tersebut). Berikutan itu, penghakiman terus telah diberikan kepada responden dan terhadap perintah itu perayu telah membuat rayuan.

Fakta menunjukkan bahawa dalam memfailkan rayuannya, perayu telah gagal mengeluarkan perintah yang dirayui dan oleh itu, memorandum rayuan tersebut, sementara mengandungi penghakiman yang dirayui, telah tidak mengandungi perintah yang berkenaan dengannya. Dalam keadaan ini, di dalam rayuan ini, responden cuba untuk membatalkan notis dan rekod-rekod rayuan tersebut dengan berhujah bahawa kegagalan untuk memfailkan perintah yang dirayui adalah memudaratkan di sisi undang-undang.

Ianya tidak dipertikaikan bahawa tanggungan perayu untuk memenuhi penghakiman berkenaan adalah bersyarat ke atas ianya menghantar-serahkan satu sijil insuran dibawah s. 91(4) Akta kepada tuan punya kenderaan bermotor.

Dalam Mahkamah di bawah, bagi membuktikan pengeluaran dan penghantar-serahan sijil yang sedemikian, responden telah mengemukakan sebagai keterangan sepucuk surat daripada Pendaftar dan Ispektor Kenderaan Bermotor, Selangor (RIMV), yang menyatakan bahawa satu polisi insuran telah dikeluarkan oleh perayu kepada tuanpunya kenderaan bermotor tersebut. Perayu namun begitu telah menafikan perkara ini, dan persoalan selanjutnya dengan itu berbangkit mengenai samada surat RIMV di sini merupakan bukti cukup yang menunjukkan penghantar-serahan sijil insuran oleh perayu sepertimana yang dikehendaki oleh s. 96(1).

Diputuskan:

Oleh Siti Norma Yaakob, HMR (menyampaikan penghakiman Mahkamah):

[1] Kaedah 18(4)(d) Kaedah-kaedah Mahkamah Rayuan 1994 menghendaki seseorang perayu supaya memasukkan dalam memorandum rayuannya satu salinan penghakiman, dekri atau perintah terhadap mana ianya merayu. Suatu penelitian rekod-rekod rayuan disini menunjukkan bahawa satu salinan penghakiman tersebut telah dimasukkan dalam memorandum rayuan dan oleh kerana penghakiman itu, sebagaimana halnya dengan perintah tersebut, telah dirayui, maka tidak terdapat apa-apa merit kepada bantahan awal responden.

[2] Seksyen 96(1) menyatakan mengenai penghantar-serahan sijil insuran oleh sebuah syarikat insuran kepada pihak yang diinsuran dan bukannya oleh sesiapa yang lain. Sijil tersebut dengan itu mestilah dihantar-serah oleh perayu kepada pihak yang diinsurankan dan bukannya oleh sesiapa yang lain. Dalam keadaan yang sedemikian, surat daripada RIMV tersebut tidak memenuhi kehendak-kehendak s. 96(1).

[3] Surat RIMV tersebut mungkin menunjukkan bahawa polisi itu telah dikelurkan oleh perayu tetapi ianya bukan merupakan keterangan mengenai apa-apa penghantar-serahan sijil insuran oleh perayu kepada pihak yang diinsurankan sepertimana yang dikehendaki oleh s. 96(1). Untuk menganggapkan bahawa ianya telah melakukan sedemikian sepertimana yang dilakukan oleh Hakim adalah sesungguhnya salah. Surat tersebut bukannya sijil yang dibayangkan oleh s. 96(1).

[4] Oleh kerana tidak terdapat bukti penghantar-serahan sijil insuran sepertimana yang dikehendaki oleh s. 96(1), perkara ini dengan sendirinya menjadi isu yang boleh dibicarakan bagi yang mana perayu adalah berhak kepada satu perbicaraan betul. Tambahan lagi, perayu telah memplidkan bahawa surat daripada RIMV tersebut adalah palsu. Ini menjadikannya lebih tidak wajar bagi tindakan terus diambil dalam guaman ini.

[Rayuan dibenarkan. Perayu diberi izin tidak bersyarat untuk membuat pembelaan.]

Legislation referred to:
Road Transport Act, 1987, ss. 91(4), 96(1)
Rules of the Court of Appeal 1994, r. 18(4)(d)

For the appellant - Manjit Singh (Tunku Farik with him); M/s. Azim Ong & Krishnan
For the respondent - B.S. Sidhu (Sharon Sidhu with him); B.S. Sidhu & Co.

JUDGMENT

Siti Norma Yaakob JCA:

In this recovery suit, the respondent had on 20 September 1994 in proceedings first commenced in the Sessions Court, Kelang and later transfered to the High Court at Shah Alam, obtained judgment against the driver and the owner of a motor vehicle BBQ 7196 which had knocked into him. When the judgment could not be enforced against the driver and owner, the respondent filed a recovery action, Civil Suit No. 23-91-94 against the appellant, as the insurer of the motor vehicle, under s. 96(1) of the Road Transport Act, 1987. In proceedings, *inter alia,* for summary judgment under O. 14 of the Rules of the High Court, 1980 the respondent obtained judgment against the appellant on 19 February 1995 of the sum claimed, interest and costs.

The appellant has appealed against the order for summary judgment and before us, Mr. B.S. Sidhu, Counsel for the respondent, has also filed two separate applications:

(1) to substitute one Asiah bte Abdul Manap, the widow of the respondent, as the respondent in these proceedings as the respondent has since died;

(2) to strike out the notice of appeal and the records of appeal on the ground that the appellant had not complied with r. 18(4)(d) of the Rules of the Court of Appeal, 1994.

We dealt with Mr. B.S. Sidhu's applications first and in relation to the application for substitution, when it was pointed out to Mr. B.S. Sidhu, that the only way substitution could be done where a deceased had died intestate is through the widow obtaining Letters of Administration of her husband's estate and in this case the widow has not yet applied for Letters of Administration, Mr. B.S. Sidhu readily agreed to withdraw the application. In any event on the death of the respondent, his estate devolves by operation of law on the Official Assignee under s. 39 of the Probate and Administration Act, 1959 until administration is applied for and granted to any lawful kin of the deceased.

As to the second application to strike out the notice of appeal and records of appeal, since the objection raised in the application can equally be argued before us in the appeal itself, we made no order on the second application but allowed Mr. B.S. Sidhu to raise the same objection when presenting his arguments in answer to the appeal.

This he did by way of a preliminary objection. He contended that the notice of appeal and records of appeal are bad in law as the order appealed against dated 9 February 1995 has not been extracted and filed in the records of appeal. What forms part of the records is only the judgment but not the order. As such r. 18(4)(d) of the Courts of Appeal Rules 1994 has not been complied with.

That rule requires an appellant to include in his memorandum of appeal, a copy of the judgment, decree or order appealed from. A perusal of the records of appeal at pages 7 - 10 shows that a copy of the judgment has been included in the memorandum of appeal and since that judgment, in as much as the order, has been appealed against, we see no merits to the respondent's preliminary objection particularly when r. 18(4)(d) makes reference to a judgment, decree or order.

Coming now to the merits of the appeal, the respondent's cause of action against the appellant is founded under s. 96(1) of the Road Transport Act, 1987 under which an insurer is duty bound to satisfy any judgment obtained against any person insured by the insurer in respect of third party risks. However the liability to satisfy such judgment is conditional upon the insurer having delivered a certificate of insurance under s. 91(4) of the same Act to the person by whom the policy has been effected. It is the appellant's defence that it never issued or delivered a certificate of insurance to the owner of the motor-vehicle that collided into the respondent.

The respondent's reply to this is that such a certificate was issued as is evidenced by a letter written by the Registrar and Inspector of Motor Vehicles, Selangor (RIMV) dated 2 March 1988 to the respondent's solicitors in answer to the latter's enquiry as to the status of the motor-vehicle. Section 96(1) speaks of the delivery of a certificate of insurance by an insurance company to the insured as a precondition before liability can be pinned against the insurers. The certificate must therefore be issued and delivered by the appellant to the insured and not by anybody else. The letter from the RIMV does not fulfill the requirements of s. 96(1). On the face of it, it merely states that the appellant had issued a policy to the owner of the motor-vehicle, BBQ 7196 to cover the period from 17 October 1985 to 16 October 1986. The policy may well have been issued by the appellant but the letter from the RIMV is not evidence of any delivery of a certificate of insurance by the appellant to the insured as required by s. 96(1). To regard that it did as did the trial Judge is totally erroneous. The letter from the RIMV is not the certificate that is envisaged by s. 96(1). The certificate has never been produced by the respondent and the appellant has denied delivering one to the insured person. On the contrary it has also alleged that the letter from the RIMV has been forged.

Since it is very clear that there has been no proof of delivery of the certificate of insurance as required by s. 96(1), this in itself provides a triable issue for which the appellant is entitled to a full trial. Added to this is the fact that the appellant has pleaded the letter from the RIMV to have been forged, a fact which had been confirmed by the Motor Insurers Bureau of West Malaysia. This makes it all the more undesirable and inappropriate for this suit to be dealt with summarily.

On that finding, we allowed the appeal with cost. The appellant was given unconditional leave to defend the action and the judgment sum which had already been paid to the respondent's solicitors was ordered to be refunded to the appellant's solicitors forthwith together with all accrued interests. Lastly we ordered that the deposit be refunded to the appellant.

Reported by W.A. Sharif